

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

75-2136

To be argued by
PHYLIS SKLOOT BAMBERGER

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SEYMOUR KLONER,

Appellant,

-against-

Docket No. 75-2136

UNITED STATES OF AMERICA,

Appellee.

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM AN ORDER
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

B
P/S

WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
SEYMOUR KLONER
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

PHYLIS SKLOOT BAMBERGER,
Of Counsel.

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DIST/ OFFICE	FILED NUMBER	MO. DAY YEAR	J	N/S	O	R	S	DEMALED	JUDGE NUMBER	DOJ. DEM.	V.P. NUMBER
207 1	75 1212	07 23 75	3	530	1			APPEAL	0708X	RAYFEL, J.	

PLAINTIFFS

KDONER, SEYMOUR

UNITED STATES OF AMERICA
ex rel. SEYMOUR KLONER

DEFENDANTS

CLOSED

U.S. BOARD OF PAROLE

UNITED STATES BOARD OF PAROLE

PRO SE APPLICATION
under General Rule 26(e)

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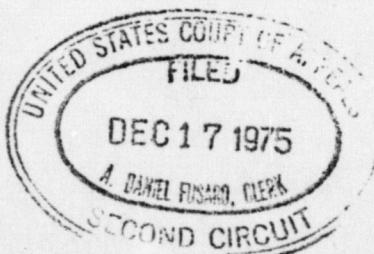
CAUSE

HABEAS CORPUS

REALTED: 71 CR 461

ATTORNEYS

FOR PLTFF:
 Seymour Kloner/Pro Se
 #72129
 126-02 82nd Ave.
 Kew Gardens, N.Y. 11415



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DATE

RECEIPT NUMBER

C.D. NUMBER

STATISTICAL CARDS

CARD

DATE MAILED

JS-5

JS-6

U.S.A. ex rel. S. KLONER v. U.S. BOARD OF PAROLE

DATE	NR.	PROCEEDINGS
7-28-75		APPLICATION FILED FOR A WRIT OF HABEAS CORPUS. (1)
7-28-75		BY WEINSTEIN, J.--Order dtd 7-21-75 filed directing the Clerk to treat action as a petition for a writ of habeas corpus, etc. Order endorsed on application papers.
8-8-75		Copy of letter to petitioner from Judge Weinstein filed, dated 8-4-75 with annexed letter of petitioner. (2)
3-23-75		Copy of letter to petitioner from J. Weinstein filed, dated 8-19-75 with annexed letter of petitioner. (3)
8-28-75		Letter of petitioner dated 7-5-75 (addressed to Judge Judd) filed re: order to show cause, etc. (4)
8-28-75		Letter of petitioner dated 8-14-75 (addreddes to Judge Judd) filed re: show cause. (5)
9/8/75		Petition of Seymour Kloner filed. (6)
9-10-75		Letter from Stanley Marcus dtd 9-10-75 filed. (7)
9-22-75		By RAYFIEL, J.-Memorandum and Order dtd 9-22-75 denying the the application for a writ of habeas corpus filed. (8)
9-23-75		Copy of letter of Clerk of Court filed dated Sept. 23, 1975 re enclosure of a copy of memo., etc. (9)
9-24-75	05	JUDGMENT dtd 9-24-75 dismissing petition filed <i>nmw</i> . (10)
9-24-75		Notice of appeal filed. Copy mailed to C of A. <i>nmw</i> jn (11)
9-26-75		All documents in this matter together with Certified copy of Docket Entries were on this day transmitted to Clerk, U.S.C.A. <i>9/26/75</i> (12)
9-26-75		Copy C mailed to Clerk, U.S.C.A. <i>On file</i> (13)
9-26-75		Petition for writ of habeas corpus filed. (14)
10-29-75		Notice of motion for reqrgument and to vacate judgment filed. (15)
10-30-75		By RAYFIEL, J.-ORDER dtd 10-30-75 denying petitioner's application for relief of judgment or order filed. (mg) (16)
11-10-75		By RAYFIEL, J.--Order dtd 11-10-75 denying petitioner's application of 10-31-75 filed. The Clerk is directed to file a notice of appeal on petitioner's behalf. (17)
11-11-75		Petition of 10-31-75 for writ of habeas corpus filed (see entry above for decision) (18)
11-12-75		NOTICE OF APPEAL filed. Petition, order, and notice mailed to C of A with certified copy of docket entries. (19)

A TRUE COPY ATTEST:	<i>Red M. P.R.</i>
EVELYN ORGEL	CLERK
<i>Doris M. Orgel</i>	DEPUTY CLERK

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DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO. DAY YEAR	J	N/S	O	R	DEMAND	JUDGE NUMBER	JURY DEM.	DOCKET YR. NUMBER
75 207-1	75 1379	08 21 75	2	510	1		APPEAL	0708X		

PLAINTIFFS

DEFENDANTS

KLONER, SEYMOUR
SEYMOUR KLONER

UNITED STATES DEPARTMENT OF
JUSTICE: UNITED STATES BOARD
OF PAROLE, UNITED STATES
BUREAU OF PRISONS;
FEDERAL DETENTION HEADQUARTERS,
NEW YORK;
LEWISBURG FEDERAL PENITENTIARY,
QUEENS HOUSE OF DETENTION FOR MEN

CAUSE

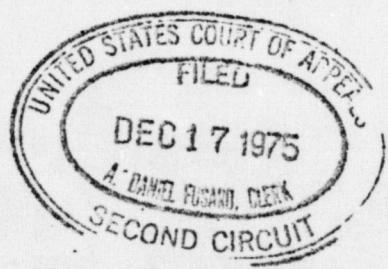
Pursuant to Sec. 2255
(Related Case 75-C-1212)

SEYMOUR KLONER

ATTORNEYS

Pro Se
126-02 = 82nd Ave.
KEW GARDENS, N.Y. 11415

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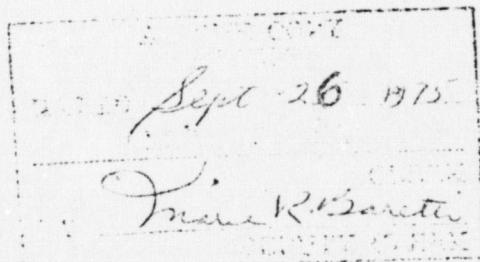
STATISTICAL CARDS

DATE	RECEIPT NUMBER	CD NUMBER	CARD	DATE MAILED
			JS-5	
			JS-6	

75C 1379

SEYMOUR KLOMER vs. U. S. DEPARTMENT OF JUSTICE, ET

DATE	NR.	PROCEEDINGS	
8-21-75		APPLICATION FILED PURSUANT TO SEC. 2255 (Re: 75-C-1212)	(1)
8-21-75		Letter of petitioner filed dated August 18, 1975 , etc.	(2)
9-8-75		Letter of petitioner herein filed dated Aug. 29, 1975 addressed to Clerk, etc.	(3)
9-9-75		Affidavit of Defendant herein filed dated Sept. 4, 1975, together with a letter (Notice) filed dated Sept. 4, 1975, etc. (4 & 5)	
9-22-75		BY RAYFIEL, J. DECISION and ORDER rendered and filed. The court finds that a hearing herein is not warranted, and the application is in all respects DENIED. (See Decision, etc., entered in 75-C-1212)	
9-23-75		Copy of letter of Clerk of Court filed dated Sept. 23, 1975 addressed to the petitionee herein re enclosure of a copy of memo., etc. (6)	
9-24-75		JUDGMENT OF DISMISSAL filed in 75C-1212	
9-24-75		Notice of appeal filed. Duplicate mailed to C of A. Jn	(7)



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DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO. DAY, YEAR	J	N/S	O	R	R 23	S	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR. NUMBER
207-1	75 1395	08 22 75	1	510	1				APPEAL	0708X		
PLAINTIFFS						DEFENDANTS						

UNITED STATES OF AMERICA

KLONER, SEYMOUR
SEYMOUR KLONER

PURSUANT TO SEC. 2255
(Related Case 75-C-1212)

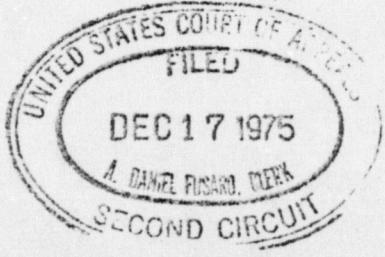
CAUSE

DAVID G. TRAGER
U.S. ATTORNEY
225 Cadman Plaza East
Brooklyn, N.Y. 11201

ATTORNEYS

SEYMOUR KLONER
PRO SE
126-02-82nd Avenue
Kew Gardens, N.Y. 11415

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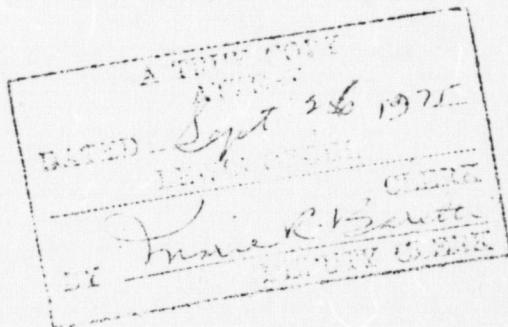
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75-C-1335

U.S.A. vs. SEYMOUR KLONER

DATE	NR.	PROCEEDINGS
8-22-75		APPLICATION FILED PURSUANT TO SEC. 2255- to vacate sentence, etc. (1) (Re: 75-CR-1212)
9-22-75		BY RAYFIELD, J. DECISION and ORDER rendered and filed. The court finds that a hearing herein is not warranted, and the application is in all respects DENIED. (See Decision, etc., entered in 75-C-1212).
9-23-75		Copy of letter of Clerk of Court filed dated Sept. 23, 1975 re enclosure of a copy of memo., etc. (2)
9-24-75		JUDGMENT OF DISMISSAL dtd 9-24-75 filed in 75C-1212. ---
9-24-75		Notice of appeal filed. Duplicate mailed to C of A. --- (3)



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T - 5231

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
SEP 22 1975

SEYMOUR KLONER, ex rel.,

x TIME A.M.
P.M.

Petitioner,

- against -

75 C 1212

UNITED STATES DEPARTMENT OF JUSTICE;
UNITED STATES BOARD OF PAROLE;
UNITED STATES BUREAU OF PRISONS;
FEDERAL DETENTION HEADQUARTERS, NEW
YORK; LEWISBURG FEDERAL PENITENTIARY;
QUEENS HOUSE OF DETENTION FOR MEN,

75 C 1379

75 C 1395

Respondents.

RAYFIELD, J.

On November 19, 1971 the petitioner was sentenced by the undersigned to five years imprisonment under Section 4208(a)(2) of Title 18, United States Code, on his plea of guilty to the charge of bank larceny (Title 18, Section 2113(b), United States Code). On September 17, 1973, after having served some 22 months of his sentence, he was paroled.

Thereafter he was charged with violating his parole conditions in that (1) he failed to report to his parole officer a change in his residence, and (2) that he left the area of his parole supervision without permission. At the hearing on those

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charges, held at the Federal Detention Headquarters in New York City on February 24, 1975, the charges were sustained and his parole was revoked. It may be added that the petitioner admitted the violations at the hearing.

The findings of the Parole Board, upon which the revocation of parole was based, sustained the charges on the admissions of petitioner. Those findings have been affirmed on petitioner's appeal to the Regional Director of the Parole Board, and on further appeal to the National Appellate Board of the United States Board of Parole. At no time has the petitioner challenged those findings. While he argues that his parole officer was aware of the violations, he does not claim that the violations were with the parole officer's permission.

It is well established that the Board of Parole has broad discretion in revoking parole. "Unless it is clearly shown that the Board has abused its discretion in revoking . . . parole, the courts will not interfere. Freedman v. Looney, 210 F.2d 56 (10th Cir.); Clark v. Stevens, 291 F.2d 388 (6th Cir.)." Earnest v. Moseley, 426 F.2d 466 (10th Cir.). There is no showing of abuse of discretion at bar.

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The petitioner has submitted, pro se, a number of applications variously denominated. Their general thrust is directed against the order of revocation, but all will be considered herein.

The petitioner contends that the revocation of his parole was illegal. He claims that his parole officer "was totally and completely aware of petitioner's residence up to and including the day said petitioner reported to U.S.P.O.'s office on January 24, 1975; at that date at 9:15 A.M. Mr. Fennelly [the parole officer] told petitioner that his parole was being revoked; this was after petitioner was instructed to fill out his monthly report form by Mr. Fennelly and to inscribe as his legal residence 899 Montgomery Street." [899 Montgomery Street was the original residence which petitioner was charged with having changed].

As to the charge that petitioner left the supervision area without permission, petitioner argues that he took a "business-vacation" on medical advice; that he was not advised that any statement, made by him, could be used against him; and that his parole officer advised "that he would not be revoked for this item."

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Petitioner has moved, further, to vacate his original sentence under 28 U.S.C. 2255. He contends that he failed to appeal from the judgment of conviction because his then attorney failed to advise him of his right to appeal. Assuming that he received no such advices, he was not prejudiced since he makes no claim of any jurisdictional defect in his conviction. He could not have raised any non-jurisdictional issues on appeal since his conviction was based on his plea of guilty. ". . . A voluntary plea of guilty constitutes an effective and complete waiver of all non-jurisdictional defects which might be otherwise raised by way of defense, appeal or collateral attack. Weir v. United States, (7th Cir.), 92 F.2d 634, 635, 114 A.L.R. 481." United States v. Hetherington, 279 F.2d 792, 796. To similar effect, see United States v. Spada, 331 F.2d 995, cert. denied, 379 U.S. 865.

In his motion under 28 United States Code §2255, petitioner makes the further claim that "prior to sentencing [his] attorney stated that [he] would receive a sentence of probation for two years; that he worked out a deal with the U. S. Attorney Anthony Accetta." This vague, unsupported, conclusory claim of an unfulfilled agreement between

petitioner's attorney and the Assistant United States Attorney, is clearly insufficient to warrant a hearing. United States v. Wilkins, 281 F.2d 707.

Finally, he complains that in violation of his religious beliefs he has been denied kosher food and the ability to pray three times daily "with a quorum of Jews." This court is without power to grant the relief he seeks because he is no longer in federal custody. He is presently confined in the Queens House of Detention awaiting sentence on two charges of larceny, to which he pleaded guilty in Kings and Queens County. A detainer has been filed with the state authorities effective upon his release from the state institution. In any event, control of prison administration is not a function of a sentencing court. United States v. Huss, ____ F.2d ___, 2d Cir., July 25, 1975, Slip Opinion No. 1248, September Term, 1974.

The court finds that a hearing herein is not warranted, and the applications are in all respects denied.

This decision constitutes an ORDER. The Clerk is directed to file a notice of appeal on the petitioner's behalf.

Dated, Brooklyn, New York
September 22, 1975



United States District Judge

1
2 UNITED STATES DISTRICT COURT
3

4 EASTERN DISTRICT OF NEW YORK
5

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6
7 UNITED STATES OF AMERICA, :
8

-against- : 71-CR-461
9

SEYMOUR KLONER, :
10

Defendant. :
11

United States Courthouse
Brooklyn, New York

September 2, 1971
9:30 o'clock A.M.

14
15 Before :
16

HONORABLE LEO RAYFIELD, U.S.D.J.
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21
22 MICHAEL PICOZZI
OFFICIAL COURT REPORTER
23
24
25

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2 ONLY COPY AVAILABLE
3

4 Appearances:
5

6 EDWARD R. NEAHER, ESQ.
7 United States Attorney
8 for the Eastern District of New York
9

10 BY: ANTHONY ACCETTA, ESQ.
11 Assistant U.S. Attorney
12

13 AARON SCHACHTER, ESQ.
14 Attorney for Defendant
15
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C-3

2 MR. ACCETTA: I apologize for being late this
3 morning.

4 MR. SCHACHTER: I think he did it purposely to
5 get back at me.

6 THE COURT: May I have the file?

7 THE CLERK: Yes, your Honor.

8 MR. SCHACHTER: Good morning, your Honor.

9 At this time, I as the attorney assigned to
10 represent Seymour Kloner, wish to withdraw his plea of
11 not guilty heretofore entered and now plead this
12 defendant guilty to count 2 of Indictment No. 71-CR-461.

13 THE COURT: You are Mr. Kloner?

14 THE DEFENDANT: Yes.

15 THE COURT: You are Seymour Kloner?

16 THE DEFENDANT: Yes.

17 THE COURT: You heard counsel state you wish to
18 withdraw the plea heretofore entered in this case and
19 substitute a plea of guilty to count 2 of the
20 indictment; is that correct?

21 THE DEFENDANT: Yes.

22 THE COURT: I am going to read to you count 2
23 of the indictment so that you may know what that charges
24 you with having done.

25 Count 2 provides that on or about the 19th day

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C-4

of February, 1971, within the Eastern District of New York, the defendant Seymour Kloner, that is you, knowingly and willfully took and carried away with intent to steal money in excess of \$100, to wit, \$1,974, which was in the care, custody, control, management, possession of the Pioneer Savings and Loan Association, 1111 Pennsylvania Avenue, Brooklyn, New York, the deposits of which savings and loan association were then and there insured by the Federal Savings and Loan Insurance Corporation.

That is charged with being a violation of
Title 18 of the United States Code Section 2113(b).

13 You know, Mr. Kloner, you have a right to a
14 trial before a jury if you wish one, and you have a
15 right to have witnesses appear and testify in your
16 behalf. Do you understand that?

17 MR. KLONER: Yes.

18 THE COURT: Do you understand, as a result of
19 your plea, the Court would have the right to impose a
20 sentence upon you of as much as one year and to impose
21 a fine on you of as much as \$1,000?

22 MR. SCHACHTER: I think there is a slight -

23 MR. ACCETTA: I believe that is a ten-year
24 section.

1 MR. SCHACHTER: No, five. Ten, that is right.

2 MR. ACCETTA: Ten years with a \$5,000 fine.

3 MR. SCHACHTER: Up to ten years.

4 THE COURT: Come up here, please.

5 The Court would have the right to impose a
6 sentence of as much as ten years and fine as much as
7 \$5,000. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Has anyone made any promises to you
10 or made any threats or used any duress in inducing you
11 to enter a plea of guilty?

12 THE DEFENDANT: No, sir.

13 THE COURT: Is the plea entirely voluntary on your
14 part?

15 THE DEFENDANT: Yes. *ONLY COPY AVAILABLE*

16 THE COURT: You keep looking at your lawyer.
17 Do you understand what I've said to you?

18 Is the plea voluntary?

19 THE DEFENDANT: Yes.

20 MR. SCHACHTER: The defendant is a very nervous
21 individual.

22 THE COURT: Would you come up, please?

23 Mr. Kloner, I am prompted to ask you these
24 questions because of the fact on several occasions

1 during the course of my colloquy with you you have
2 turned toward your counsel as if inquiringly. Have you
3 ever undergone psychiatric care?

4 THE DEFENDANT: No, sir.

5 THE COURT: What is your schooling?

6 THE DEFENDANT: One year of college.

7 THE COURT: How old are you?

8 THE DEFENDANT: 31.

9 THE COURT: What is your marital status?

10 THE DEFENDANT: Presently married. The second
11 marriage for me. I was married prior.

12 THE COURT: Do you have any children?

13 THE DEFENDANT: A three-year-old daughter.

14 THE COURT: I will accept the plea.

15 MR. SCHACHTER: Thank you, your Honor. With the
16 understanding at the time of sentence count 1 of the
17 indictment will be dismissed.

18 THE COURT: It's the usual practice when there
19 is a disposition of a case by sentence the judgment
20 becomes final.

21 MR. ACCETTA: May I suggest perhaps it would be
22 beneficial if a factual basis was established for the
23 plea?

24 I don't believe the defendant -- it might be
25 beneficial to establish a factual basis for the plea.

1 I don't believe the defendant has stated what he did in
2 connection with the bankrobbery.

3 THE COURT: I thought I read the charge. Did
4 you commit the act?

5 THE DEFENDANT: Yes, I made a confession to the
6 FBI.

7 MR. SCHACHTER: He made a full confession to the
8 FBI.

9 THE COURT: We will confer with the Probation
10 officer so that material can be obtained.

11 MR. SCHACHTER: Continued on personal bond?

12 THE COURT: What is the present bail?

13 MR. ACCETTA: \$10,000 personal bond. The
14 Government has no objection.

15 THE COURT: I will continue it.

16 MR. SCHACHTER: Thank you, sir.

17 Thank you very kindly.

19 * * *

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1
2 UNITED STATES DISTRICT COURT
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4
5 EASTERN DISTRICT OF NEW YORK
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7
8 UNITED STATES OF AMERICA, : 71-CR-461
9 -against :
10
11 SEYMOUR KLONER, :
12
13 Defendant. :
14

15 United States Courthouse
16 Brooklyn, New York
17

18 November 19, 1971
19

20 Before :
21

22 HONORABLE LEO RAYFIELD, U.S.D.J.
23

24
25 MICHAEL MIELE
OFFICIAL COURT REPORTER

1
2 Appearances:

3
4 EDWARD R. NEAHER, ESQ.,
United States Attorney
5 for the Eastern District of New York

6 BY: ANTHONY ACCETTA, ESQ.
7 Assistant U.S. Attorney

8 AARON SCHACHTER, ESQ.
9 Attorney for Defendant
BY: MEYER CHAZANOV, ESQ.
10 Of Counsel

1
2 THE COURT: Do you have any objection to counsel
3 appearing in Mr. Schachter's stead for the purpose of
4 representing you on the sentence?

5 THE DEFENDANT: No, I have no objection.

6 THE COURT: All right. You may make a statement
7 in behalf of Mr. Kloner.

8 Have you noted your appearance:

9 MR. CHAZANOV: Yes.

10 I met Mr. Kloner this morning for the first time
11 and went over the matter. I don't suppose he will ever
12 forget February 19th of this year. He was desperate.

13 Here is a young man, 31 years of age, who is married
14 and had to pay his wife \$50 a week. He has a child.
15 He lost a good job because the firm went out of
16 business and he married again and has to support a
17 second marriage.

18 Debts were piling up. He went out with a toy
19 pistol and held up this loan association in his own
20 car and was apprehended two or three hours later and
21 they got all their money back. It was an act of
22 desperation, your Honor.

23 At the present time he has got himself a job.
24 I think his wife is also pregnant, that is, the second
25 marriage. I think under the circumstances he would be

1 a good risk for Probation.

2 Confining him in jail, your Honor, wouldn't help
3 the first nor the second wife who is pregnant.

4 THE COURT: Our purpose in imposing sentence is
5 not to consider the family or what the result may be as
6 far as his home life may be concerned. This is a
7 serious charge.

8 MR. CHAZANOV: I realize that.

9 That takes in the entire situation. There is
10 nothing further that I can say.

11 THE COURT: Mr. Kloner, do you wish to make a
12 statement in your own behalf?

13 THE DEFENDANT: If I may?

14 THE COURT: Surely.

15 THE DEFENDANT: I would like a chance so that I
16 could be an honorable citizen. I have a job now and I
17 want to work and I want to be able to see my daughter.
18 I will be a good husband. I am sorry for what I did.
19 I just did not think clearly. I would like a chance to
20 be an upright citizen.

21 THE COURT: Is that all you wish to say?

22 THE DEFENDANT: I think so.

23 THE COURT: You have been very fortunate in that
24 the Government permitted you to, or was agreeable to
25 accept a plea to subdivision (b) of Section 2113, a

1 much less serious crime than the crime of which you
2 could have been convicted of which calls for a maximum
3 of twenty and possibly twenty-five years since a gun
4 figured in it.

5 THE DEFENDANT: It was a toy pistol, a plastic
6 toy pistol. It was not a real gun.

7 THE COURT: Those of whom you demanded money
8 may have thought and feared that it was. The fact is
9 that you were permitted to plead to a much less degree
10 than the crime charged under that section.

11 I think your problem stems from the fact that
12 you are living or attempted to live beyond your means
13 and that instead of confining your living standards to
14 your earnings you are trying to have it match your
15 earnings. You are in substantial debt as a result of
16 that.

17 THE DEFENDANT: I paid back these debts little
18 by little.

19 THE COURT: I am going to be much more lenient
20 than I intended to be and much more lenient than the
21 panel of judges who confer with the sentencing judge
22 has indicated. I am going to commit you to the custody
23 of the Attorney General or his authorized representative
24 to be confined in an institution to be selected by him
25 for a period of five years.

P-6

The sentence is imposed under 4208(a)(2). That

gives the Board of Parole, if it chooses, to exercise
that right, the right to release you on parole prior
to the expiration of one-third of the sentence which is
the usual rule in the practice, and in fact they may
exercise that right at any time during the course of
the sentence. That is entirely up to the Board of
Parole. I have no control over it. I am leaving the
door open for them to exercise that right in your
favor.

Is there another count?

12 MR. ACCETTA: At this time the Government moves
13 to dismiss count 1 of the indictment 71-CR-461.

THE COURT: The motion is granted.

15 THE DEFENDANT: Judge, I won't be able to see
16 my daughter who is four years old. How can I support
17 them?

18 Please, sir, give me a chance for Probation.
19 I beg you.

considered by you before you embarked on the enterprise
which got you into this trouble.

23 THE DEFENDANT: I could not think clearly. My
24 wife is here. She is sick.

25 THE COURT: There is nothing to indicate you

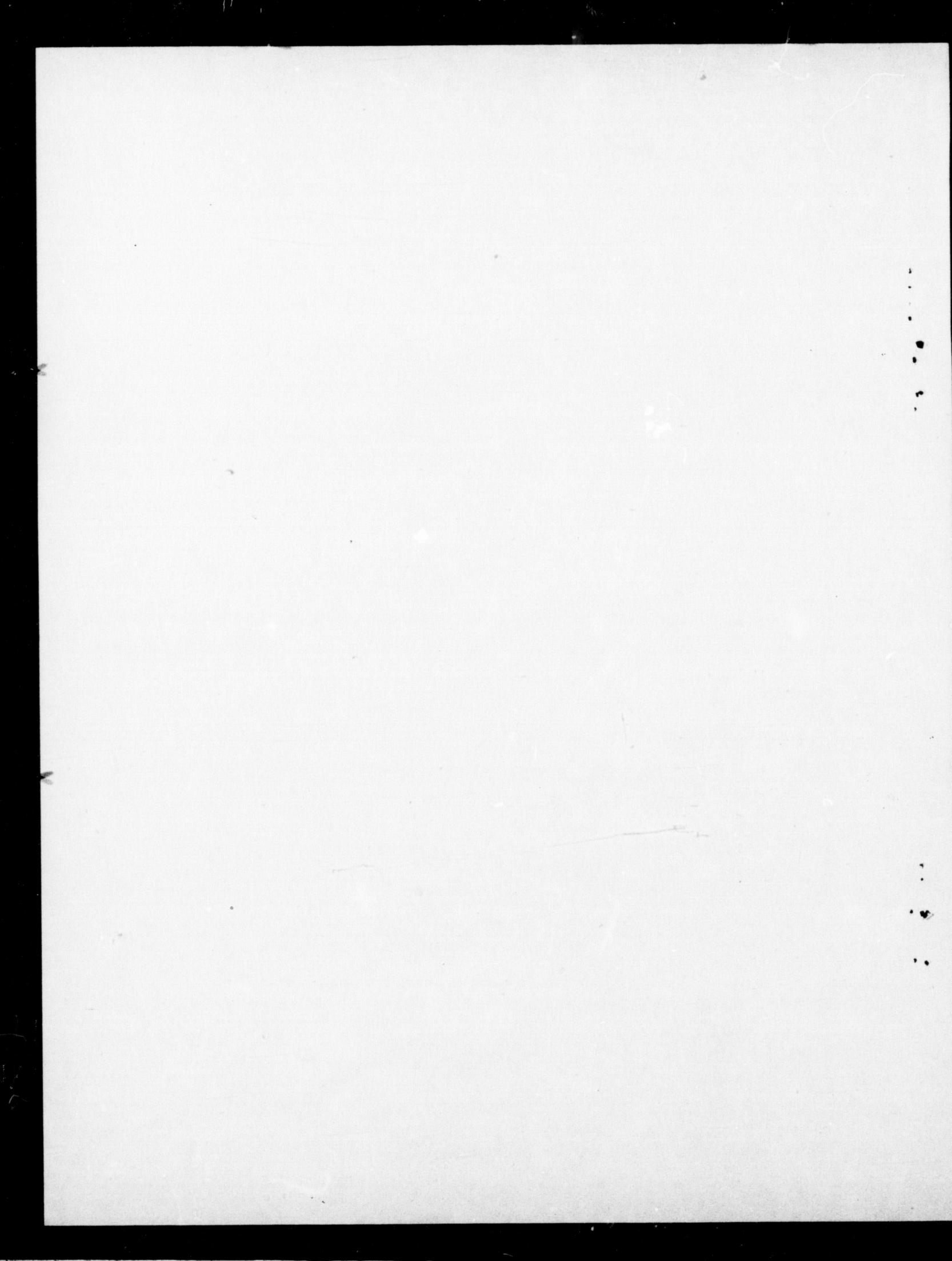
1 might not resort to the same conduct.

2 THE DEFENDANT: My present employer -- I have a
3 job. I beg you.

4 * * *

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CERTIFICATE OF SERVICE

Jan 16, 1976

I certify that a copy of this brief and appendix
has been mailed to the United States Attorney for the
Eastern District of New York.

Roger J. Breen